IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

CRP.No. 549 of 2007()

AS.44/2004 of ADDL. DISTRICT COURT, VADAKARA
OS.39/2001 of MUNI-MAGI.COURT, PERAMBARA
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REVN. PETITIONER/APPELLANT/DEFENDANT:

CHERUKUNIYIL ACHUTHAN NAIR,
S/O.KUNHIKANNA KURUP, AGED 70 YEARS,
PENSIONER, RESIDING AT KIZHAKKE POYIL HOUSE,
AVADANALLOOR AMSOM DESOM,
KOYILANDY TALUK, KOZHIKODE DT.

BY ADV. SRI.K.P.SUDHEER

RESPONDENT/ RESPONDENT/PLAINTIFF:

PUTHALATH RAVEENDRAN, S/O.KANARAN,
AGED 44 YEARS, BUSINESS, KAYANNA AMSOM
CHERUKKAD DESOM, KOYILANDY TALUK, KOZHIKODE DT.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN,J

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C.R.P.No.549 of 2007

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Dated this the 14th day of June, 2007

ORDER

This civil revision petition is preferred against the judgment and decree in A.S.No.44/2004 of the Additional District Judge,vadakara. The suit was for return of the amount paid as advance in an agreement for sale. It is the case of the plaintiff that he entered into an agreement with the defendant for the purchase of 38 cents of land for a consideration of 38,000/- and on the same day paid Rs.20,000/- as advance that is 20.02.1998. Later the defendant did not act in compliance with the terms of the agreement and committed breach and therefore the plaintiff has come forward with the suit for return of money with 6% interest.

The defendant denies the execution of an agreement for sale but admitted his signature in a stamp paper. But he would contend that there were previous transaction with respect to about 50,000/- rupees and at that time he had given a blank signed stamp paper as well as a cheque and that the plaintiff making use of the blank cheque had filed a complaint against the

defendant through his friend Sri.Suresh Babu and he has filed a suit of this nature. The court below on appreciation evidence came to the conclusion that the plaintiff and defendant has entered in to an agreement for sale on 20.2.98 and that the defendant has committed breach and therefore the plaintiff is entitled to return the amount from the defendant more with 6% interest. The various documents had been considered and the evidence of DW2 who said about the handing over of blank stamp paper etc. was disbelieved by the court for the reason that when the defendant asserted that he handed it over on January, 1997, the evidence of witness would show that it was in December, 1997. Similarly the court found that at the appellate stage the plaintiff had produced the document of title with respect to the property which also establishes that there has been an agreement to sell and as part of the transaction the original title deed has been handed over to the plaintiff. On a thorough analysis of the entire materials, the court has come to the right conclusion regrading the agreement as well as the breach of agreement. The learned counsel for the revision petitioner submits that the court at any rate should not have granted interest from the date of the alleged execution of the

agreement. When there is a contract and the contract has failed out on account of the default of the defendant, it has to be presumed that he has unjust possession of the amount which belongs to the plaintiff. So he has been enjoying that amount without giving any property to the plaintiff and therefore I am of the view that the court below was perfectly justified in awarding 6% interest as well from the date of agreement on which day Rs.20,000/- had been handed over to the defendant. Therefore, there is no illegality or irregularity committed by the courts below in passing a decree. The civil revision petition lacks merits and is dismissed. The learned counsel submits that he may be given two months time for payment considering the sincere intention of the defendant to pay the amount. If any execution proceedings are pending the executing court may defer the said proceeding for a period of two months so as to enable the revision petitioner to pay the amount.

M.N.KRISHNAN,JUDGE

dvs